## REMARKS

Reconsideration and allowance are respectfully requested.

A new rejection has been made based on newly-applied U.S. Patent 5,701,294 Ward as a primary reference. In particular, claims 1-4, 10, 34, and 35 stand rejected under 35 U.S.C. §102(b) as being anticipated by Ward. This rejection is respectfully traversed.

To establish that a claim is anticipated, the Examiner must point out where each and every limitation in the claim is found in a single prior art reference. *Scripps Clinic & Research Found. v. Genentec, Inc.*, 927 F.2d 1565 (Fed. Cir. 1991). Every limitation contained in the claims must be present in the reference, and if even one limitation is missing from the reference, then it does not anticipate the claim. *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F.2d 1565 (Fed. Cir. 1986). Ward fails to satisfy this rigorous standard.

Ward teaches a system for flexible coding, modulation, and time slot allocation in a radio telecommunications network. Ward's focus is to dynamically adapt the user bit rate of a TDMA cellular system to achieve optimum voice quality over a broad range of radio channel conditions based on continuously monitored radio channel quality on the uplink and the downlink. The "system's combination of speech coding, channel coding, modulation, and number of assignable time slots per call" is dynamically adapted "to optimize voice quality for the measured conditions." See Abstract. Ward illustrates different combination types in Table II in column 9. Cost functions are introduced, and Ward seeks to find the combination with the lowest cost for the measured radio channel conditions to get the best voice quality that those conditions allow.

In contrast, the inventors of the present application recognized that dynamically adapting a particular processing function may not be necessary, particularly efficient, or even desirable. Certain processing operations depend on certain current channel conditions, and therefore, must

be dynamically adaptable. On the other hand, certain processing operations do not depend on current channel conditions, and therefore, can be done in advance without waiting for a current channel condition to be detected or for determinations to be made that do depend on the current channel condition. One way to increase data processing efficiency is to perform computationly intensive operations that do not depend on the modulation scheme or coding rate in advance. Indeed, certain packet processing operations, channel encoding operations, and buffering operations may be performed as soon as the data packets are available.

The independent claims recite pre-processing of data packets including performing a first coding operation on those packets to perform pre-processed data packets and that "the pre-processing does not depend on the current channel condition." But the claimed modulation selection and a further coding of the pre-processed data packets do depend on the current channel condition and are performed after the channel condition is determined. Claim 22 sets forth multiple pre-processing steps that do not depend on the current condition and multiple processing steps that are performed based on the detective current channel condition.

This division of processing operations into pre-processing operations that do not depend on the current channel condition and processing operations that do depend on the current channel condition is quite different than Ward's approach in which all such operations are performed dependent upon the current detected channel conditions. This is quite apparent, even viewing Ward's Fig. 3A in which "arrows" from Table 28 are directed to every one of the processing blocks, indicating that each operation performed is dynamically adjustable depending upon the current channel condition. There is no disclosure or suggestion in Ward that some operations not be performed before the channel condition is determined.

The Examiner argues that because Ward teaches "any combination of speech encoding, modulation and channel encoding modified dependent upon channel condition," Ward "is inherently capable of operating whereby the speech encoding pre-processing does not depend on the current channel condition." See page 4 of the official action. The Examiner is mistaken. This Ward never discloses, explicitly or "inherently," pre-processing data packets including performing a first coding operation on those data packets independently of the current channel condition. That Ward could possibly be modified so that the speech coder 21 is not adjustable based upon current channel conditions is no where disclosed or suggested in Ward.

Nor does the Examiner's "inherency" argument hold up under examintion. When the first patent was granted for the first application of a computer, that patent did not preclude subsequent patents on other computer applications even though a computer itself was "inherently" "capable" of performing a wide variety of applications. Indeed, the Federal Circuit rejected this kind of sweeping "capability" argument with respect to inherency, stating that "inherency, however, may not be established by probabilities or possibilities." *In re Robertson*, 49 U.S.P.Q. 2 v. 1949, 1951 (Fed. Cir. 1999).

The anticipation rejection based on Ward is improper and should be withdrawn. None of the secondary references cited by the Examiner overcome the fundamental deficiency in Ward described above. Accordingly, the application is in condition for allowance. An early notice to that effect is earnestly solicited.

Respectfully submitted,

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